

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

JAMES E. SIGLEY,

Petitioner,

v.

**Civil Action No. 3:07CV76
(Judge Bailey)**

WARDEN THOMAS MCBRIDE,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation ("R & R") [Doc. No. 11] of Magistrate Judge John S. Kaull, dated October 5, 2007, and the petitioner's corresponding Objections [Doc. No. 13] filed on October 17, 2008. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made.

In his Objections, the petitioner objects to the magistrate's actions in issuing an Order to Show Cause [Doc. No. 9] on October 2, 2007, and then filing the Report and Recommendations [Doc. No. 11] three days later on October 5, 2007. However, in the Report and Recommendations, the magistrate clearly states that, after filing the Order to Show Cause [Doc. No. 9], he reviewed the petitioner's file and found that the "instant petition is the petitioner's fourth § 2254 petition" challenging the petitioner's conviction. R & R at 1. As stated in the R & R, Title 28 U.S.C. § 2244(b) provides that a second or successive habeas corpus claim shall be dismissed unless the new claim falls under one of the exceptions listed in § 2254(b). In this case, the magistrate reviewed the petitioner's

previous claims and found that the instant claim contains similar assertions as the previous claims. The magistrate also found the instant claim to be abusive and repetitive, and not falling under one of the exceptions in § 2254. Therefore, after reviewing the above, it is the opinion of this Court that the petitioner's claim is repetitive, and this Court hereby finds that the Magistrate Judge's Report and Recommendation [Doc. No. 11] should be and hereby is **ORDERED ADOPTED**.

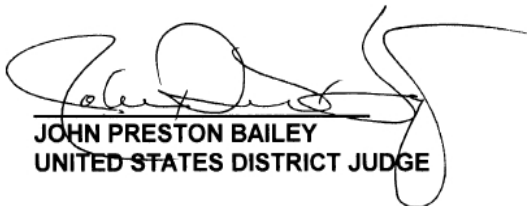
For the foregoing reasons and for the reasons stated in Magistrate Judge Kaull's Report and Recommendation, the Court **ORDERS** that:

1. the petitioner's § 2254 petition is hereby **DENIED** and **DISMISSED** with prejudice as successive.
2. the Report and Recommendation is hereby **ORDERED ADOPTED**.

It is so **ORDERED**.

The Clerk is directed to transmit true copies of this Order to the petitioner and all counsel of record.

DATED: June 30, 2008.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE